

Judge Chun

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FAMILIAS UNIDAS POR LA JUSTICIA,  
AFL-CIO, a labor organization,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
LABOR, and JULIE SU, in her official capacity  
as Acting United States Secretary of Labor,  
WASHINGTON STATE EMPLOYMENT  
SECURITY DEPARTMENT, and CAMI  
FEEK in her official capacity as Commissioner  
of Employment Security,

Defendants.

CASE NO. C24-0637JHC

**ANSWER TO FIRST AMENDED  
COMPLAINT**

Defendants Julie Su, Acting Secretary of Labor, and the United States Department of Labor (hereafter, collectively, “Federal Defendants”), by their attorneys, Tessa M. Gorman, United States Attorney, and Brian C. Kipnis, Assistant United States Attorney, for the Western District of Washington, answer the First Amended Complaint filed herein as follows:

**FIRST DEFENSE**

Federal Defendants, admit, deny, and affirmatively allege as follows:

1. Answering the allegations contained in the first sentence of paragraph 1 of the Amended Complaint, Federal Defendants admit that Plaintiff has filed a lawsuit against them based upon the Administrative Procedure Act. Answering the allegations contained in the third and fourth

1 sentences of paragraph 1 of the Amended Complaint, Federal Defendants admit that Washington  
2 Employment Security Department (ESD) and Cami Feek, Washington Commissioner of  
3 Employment Security (hereafter “State Defendants”) have been joined as party-defendants in the  
4 lawsuit. Except as expressly admitted or denied, Federal Defendants deny each and every allegation  
5 contained in paragraph 1 of the Amended Complaint.

6 2. Answering the allegations contained in paragraph 2 of the Amended Complaint,  
7 Federal Defendants admit that Plaintiff is seeking certain types of relief in their lawsuit against  
8 Federal Defendants and against State Defendants. Except as expressly admitted or denied, Federal  
9 Defendants deny each and every allegation contained in paragraph 2 of the Amended Complaint.

10 3. Answering the allegations contained in paragraph 3 of the Amended Complaint,  
11 paragraph 3 of the Amended Complaint states only legal conclusions as to the subject matter  
12 jurisdiction of this Court for which no response is required. To the extent a response is required,  
13 Federal Defendants deny the allegations contained in paragraph 3 of the Amended Complaint.

14 4. Answering the allegations contained in paragraph 4 of the Amended Complaint,  
15 paragraph 4 of the Amended Complaint contains only legal conclusions as to the forms of relief  
16 Plaintiff is seeking to obtain through its lawsuit, for which no response is required. To the extent a  
17 response is required, Federal Defendants deny the allegations contained in paragraph 4 of the  
18 Amended Complaint.

19 5. Federal Defendants admit that the Western District of Washington is a proper venue  
20 for this lawsuit. Except as expressly admitted, Federal Defendants affirmatively allege that they lack  
21 sufficient information or belief necessary to respond to the allegations contained in paragraph 5 of  
22 the Amended Complaint and, on that basis, deny the allegations contained in paragraph 5 of the  
23 Amended Complaint.

24 6. Answering the allegations contained in paragraph 6 of the Amended Complaint,  
25 Federal Defendants admit that an organization calling itself “Familias Unidas por la Justicia” is the  
26 Plaintiff in this lawsuit. Except as expressly admitted, Federal Defendants affirmatively allege that  
27 they lack sufficient information or belief necessary to respond to the other allegations contained in  
28

1 paragraph 6 of the Amended Complaint and, on that basis, deny the allegations contained in  
2 paragraph 6 of the Amended Complaint.

3 7. Answering the allegations contained in paragraph 7 of the Amended Complaint,  
4 Federal Defendants admit that Defendant Julie Su is the Acting Secretary of Labor and further admit  
5 that Plaintiff has sued Defendant Julie Su in her official capacity. Federal Defendants affirmatively  
6 allege that the Secretary of Labor is the head of the Department of Labor. Except as expressly  
7 admitted, Federal Defendants deny each and every allegation contained in Paragraph 7 of the  
8 Amended Complaint.

9 8. Answering the allegations contained in paragraph 8 of the Amended Complaint,  
10 Federal Defendants admit that the Department of Labor is an agency of the United States that has  
11 been delegated certain statutory responsibilities in connection with the H-2A Temporary  
12 Agricultural Workers program that include establishing minimum wage rates to be paid to workers  
13 by growers seeking to employ foreign workers possessing H-2A visas. Except as expressly  
14 admitted, Federal Defendants deny each and every allegation contained in Paragraph 8 of the  
15 Amended Complaint.

16 9. Answering the allegations in paragraph 9 of the Amended Complaint, Federal  
17 Defendants admit that Defendant ESD is an agency of the State of Washington. Federal Defendants  
18 further admit that ESD serves as the State Workforce Agency (SWA) for Washington. Federal  
19 Defendants affirmatively allege that as such, ESD receives funds under the Wagner-Peyser Act to,  
20 among other things, provide employment-related services to U.S. workers and employers. Federal  
21 Defendants further affirmatively allege that as part of its role as an SWA, ESD voluntarily conducts  
22 prevailing wage surveys to ascertain a prevailing wage rate for a crop, or agricultural activity, or  
23 distinct work task within an activity, within an appropriate geographic area, and transmits its  
24 findings to Federal Defendants. Except as expressly admitted or affirmatively alleged, Federal  
25 Defendants deny each and every allegation contained in paragraph 9 of the Amended Complaint.

26 10. Answering the allegations contained in paragraph 10 of the Amended Complaint,  
27 Federal Defendants admit that Defendant Cami Feek is the Washington Commissioner of  
28 Employment Security and as such is the head of the Washington Employment Security Department

1 and is sued here in her official capacity. Except as expressly admitted, Federal Defendants  
 2 affirmatively allege that they lack sufficient information or belief necessary to respond to the  
 3 allegations contained in paragraph 10 of the Amended Complaint and, on that basis, deny the  
 4 allegations contained in paragraph 10 of the Amended Complaint.

5 11. Answering the allegations contained in paragraph 11 of the amended complaint,  
 6 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
 7 respond to the allegations contained in paragraph 11 of the Amended Complaint and, on that basis,  
 8 deny the allegations contained in paragraph 11 of the Amended Complaint.

9 12. Answering the allegations contained in paragraph 12 of the amended complaint,  
 10 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
 11 respond to the allegations contained in paragraph 12 of the Amended Complaint and, on that basis,  
 12 deny the allegations contained in paragraph 12 of the Amended Complaint.

13 13. Answering the allegations contained in paragraph 13 of the Amended Complaint,  
 14 Federal Defendants admit the allegations to the extent they are consistent with 8 U.S.C.  
 15 § 1101(a)(15)(H)(ii)(A) and deny the allegations to the extent they are inconsistent with 8 U.S.C.  
 16 § 1101(a)(15)(H)(ii)(A).

17 14. Answering the allegations contained in paragraph 14 of the Amended Complaint,  
 18 Federal Defendants admit the allegations to the extent they are consistent with 8 U.S.C. § 1184(c)  
 19 and deny the allegations to the extent they are inconsistent with 8 U.S.C. § 1184(c).

20 15. Answering the allegations contained in paragraph 15 of the Amended Complaint,  
 21 Federal Defendants admit the allegations to the extent they are consistent with 8 U.S.C. § 1188(a)(1)  
 22 and deny the allegations to the extent they are inconsistent with 8 U.S.C. § 1188(a)(1).

23 16. Answering the allegations contained in paragraph 16 of the Amended Complaint,  
 24 Federal Defendants admit the allegations to the extent they are consistent with 20 C.F.R.  
 25 § 655.120(a) and deny the allegations to the extent they are inconsistent with 20 C.F.R.  
 26 § 655.120(a).<sup>1</sup>

27 <sup>1</sup> 20 C.F.R. § 655.120(a) was amended in 2024. Because the allegations in Plaintiff's complaint appear to refer to the  
 28 version of this section as it appeared prior to this amendment, the answers in this complaint correspond to the 2022  
 version of this regulation.

1           17.     Federal Defendants deny the allegations contained in paragraph 17 of the Amended  
2 Complaint.

3           18.     Answering the allegations contained in paragraph 18 of the Amended Complaint,  
4 Federal Defendants admit the allegations to the extent they are consistent with 75 Fed. Reg.  
5 6884 (Feb. 12, 2010) and deny the allegations to the extent they are inconsistent with 75 Fed. Reg.  
6 6884 (Feb. 12, 2010).

7           19.     Answering the allegations contained in paragraph 19 of the Amended Complaint,  
8 Federal Defendants admit the allegations to the extent they are consistent with 75 Fed. Reg.  
9 6884 (Feb. 12, 2010) and deny the allegations to the extent they are inconsistent with 75 Fed. Reg.  
10 6884 (Feb. 12, 2010).

11          20.     Answering the allegations contained in paragraph 20 of the Amended Complaint,  
12 Federal Defendants admit the allegations to the extent they are consistent with 88 Fed.  
13 Reg. 12760 (Feb. 28, 2023) and deny the allegations to the extent they are inconsistent with 88 Fed.  
14 Reg. 12760 (Feb. 28, 2023).

15          21.     Answering the allegations contained in paragraph 21 of the Amended Complaint,  
16 Federal Defendants admit the allegations to the extent they are consistent with 8 U.S.C. §1188(a)(1)  
17 and deny the allegations to the extent they are inconsistent with 8 U.S.C. §1188(a)(1).

18          22.     Answering the allegations contained in paragraph 22 of the Amended Complaint,  
19 Federal Defendants admit that prior to the enactment of new regulations in 2022, Federal Defendants  
20 relied on Handbook ETA 232 in carrying out their responsibilities relative to the setting of wage  
21 rates for use in the H-2A program. Except as expressly admitted, Federal Defendants deny each and  
22 every allegation contained in paragraph 22 of the Amended Complaint.

23          23.     Answering the allegations contained in paragraph 23 of the Amended Complaint,  
24 Federal Defendants admit that, among other things, State Workforce Agencies voluntarily carry out  
25 prevailing wage surveys pursuant to grant agreements with the federal government. Federal  
26 Defendants further admit that when State Workforce Agencies conduct such surveys, they report  
27 their wage rate findings to the U.S. Department of Labor. Federal Defendants further admit that, in  
28 order for wage rate findings resulting from such surveys to be validated, the surveys must meet

1 minimum standards set forth in federal regulations promulgated by the Department of Labor. Except  
2 as expressly admitted, Federal Defendants deny each and every allegation contained in paragraph 23  
3 of the Amended Complaint.

4 24. Federal Defendants admit the allegation contained in paragraph 24.

5 25. Federal Defendants deny the allegation contained in paragraph 25 of the Amended  
6 Complaint.

7 26. Answering the allegations contained in paragraph 26 of the Amended Complaint,  
8 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
9 respond to the allegations contained in paragraph 26 of the Amended Complaint and, on that basis,  
10 deny the allegations contained in paragraph 26 of the Amended Complaint.

11 27. Answering the allegations contained in paragraph 27 of the Amended Complaint,  
12 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
13 respond to the allegations contained in paragraph 27 of the Amended Complaint and, on that basis,  
14 deny the allegations contained in paragraph 27 of the Amended Complaint.

15 28. Answering the allegations contained in paragraph 28 of the Amended Complaint,  
16 Federal Defendants deny that either they or ESD committed any methodological missteps in regards  
17 to the 2019 ESD. Except as expressly denied, Federal Defendants affirmatively allege that they lack  
18 sufficient information or belief necessary to respond to the remaining allegations contained in  
19 paragraph 28 of the Amended Complaint and, on that basis, deny the allegations contained in  
20 paragraph 28 of the Amended Complaint.

21 29. Answering the allegations contained in paragraph 29 of the Amended Complaint,  
22 Federal Defendants admit that in 2021, the Plaintiffs in *Ramon Torres Hernandez, et al., v. Secretary*  
23 *of Labor, et al.*, Case No. 1:20-cv-03241, were able to obtain a preliminary injunction against the  
24 Department of Labor pertaining to prevailing wage rates in Washington based upon a prevailing  
25 wage rate survey conducted by ESD in 2018. Except as expressly admitted, Federal Defendants  
26 deny each and every allegation contained in paragraph 29 of the Amended Complaint.

27 30. Federal Defendants admit the allegation contained in paragraph 30 of the Amended  
28 Complaint.

31. Federal Defendants deny the allegation contained in paragraph 31 of the Amended Complaint.

32. Federal Defendants admit the allegation contained in paragraph 32 of the Amended Complaint.

33. Federal Defendants admit the allegation contained in paragraph 33 of the Amended Complaint.

34. Answering the allegations contained in paragraph 34 of the Amended Complaint, Federal Defendants admit the allegations to the extent they are consistent with 84 Fed. Reg. 36168 (July 26, 2019) and deny the allegations to the extent they are inconsistent with 84 Fed. Reg. 36168 (July 26, 2019).

35. Answering the allegations contained in paragraph 35 of the Amended Complaint, Federal Defendants admit the allegations to the extent they are consistent with 84 Fed. Reg. 36168 (July 26, 2019) and deny the allegations to the extent they are inconsistent with 84 Fed. Reg. 36168 (July 26, 2019).

36. Answering the allegations contained in paragraph 36 of the Amended Complaint, Federal Defendants admit the allegations to the extent they are consistent with 84 Fed. Reg. 36168 (July 26, 2019) and deny the allegations to the extent they are inconsistent with 84 Fed. Reg. 36168 (July 26, 2019).

37. Answering the allegations contained in paragraph 37 of the Amended Complaint, Federal Defendants admit the allegations to the extent they are consistent with 84 Fed. Reg. 36168 (July 26, 2019) and deny the allegations to the extent they are inconsistent with 84 Fed. Reg. 36168 (July 26, 2019).

38. Answering the allegations contained in paragraph 38 of the Amended Complaint, Federal Defendants admit the allegations to the extent they are consistent with 84 Fed. Reg. 36168 (July 26, 2019) and deny the allegations to the extent they are inconsistent with 84 Fed. Reg. 36168 (July 26, 2019).

39. Answering the allegations contained in paragraph 39 of the Amended Complaint, Federal Defendants admit the allegations to the extent they are consistent with 84 Fed. Reg. 36168



1 (July 26, 2019) and deny the allegations to the extent they are inconsistent with 84 Fed. Reg. 36168  
2 (July 26, 2019).

3 40. Answering the allegations contained in paragraph 40 of the Amended Complaint,  
4 Federal Defendants admit the allegations to the extent they are consistent with 84 Fed. Reg. 36168  
5 (July 26, 2019) and deny the allegations to the extent they are inconsistent with 84 Fed. Reg. 36168  
6 (July 26, 2019).

7 41. Answering the allegations contained in paragraph 41 of the Amended Complaint,  
8 Federal Defendants admit that although ESD submitted the results of its 2021 Survey to Federal  
9 Defendants in mid-2022, before Federal Defendants' promulgation of their new federal regulations  
10 in November 2022, ESD withdrew those survey results after the promulgation of the new federal  
11 regulations indicating that it would re-calculate prevailing wage rates under the new federal  
12 regulations. Except as expressly admitted, Federal Defendants deny each and every allegation  
13 contained in paragraph 41 of the Amended Complaint.

14 42. Federal Defendants deny the allegation contained in paragraph 42 of the Amended  
15 Complaint.

16 43. Federal Defendants admit that pursuant to 20 C.F.R. § 655.120(c)(2), the prevailing  
17 wage rates established by Federal Defendants for the 2022 harvest season, based on 2020 survey  
18 results, expired as a matter of law, and were no longer valid in May 2023. Except as expressly  
19 admitted, Federal Defendants deny each and every allegation contained in paragraph 43 of the  
20 Amended Complaint.

21 44. Federal Defendants admit the allegation contained in paragraph 44 of the Amended  
22 Complaint.

23 45. Answering the allegations contained in the first sentence of paragraph 45 of the  
24 Amended Complaint, Federal Defendants deny the allegation and affirmatively allege that the date  
25 of ESD's submission was August 11, 2024. Federal Defendants admit the allegation contained in  
26 the second sentence of paragraph 45 of the Amended Complaint.

27 46. Answering the allegations contained in paragraph 46 of the Amended Complaint,  
28 Federal Defendants admit the allegations to the extent the graph correctly represents what it is



1 purported to represent and denies the allegations to the extent the graph incorrectly represents what it  
2 purports to represent.

3 47. Federal Defendants admit that as of the day of the filing of Plaintiff's original  
4 complaint on May 7, 2024, Federal Defendants had not yet validated the results of the survey ESD  
5 conducted in 2022 for use in connection with the 2024 harvest season. Federal Defendants  
6 affirmatively allege that the preliminary injunction issued in this action on July 2, 2024, preempted  
7 any final agency action by Federal Defendants on the survey results ESD submit to the Department  
8 for the purpose of setting prevailing wage rates for the 2024 harvest season in Washington. Except  
9 as expressly admitted or affirmatively alleged, Federal Defendants deny each and every allegation  
10 contained in paragraph 47 of the Amended Complaint.

11 48. Federal Defendants deny each and every allegation contained in paragraph 48.

12 49. Federal Defendants deny each and every allegation contained in paragraph 49.

13 50. Federal Defendants deny each and every allegation contained in paragraph 50.

14 51. Federal Defendants deny each and every allegation contained in paragraph 51.

15 52. Answering the allegations contained in paragraph 52 of the Amended Complaint,  
16 Federal Defendants admit that pursuant to their regulations, specifically, 20 C.F.R. § 655.120(c)(2),  
17 prevailing wage rates established by Federal Defendants automatically expire after one year as a  
18 matter of law. Except as expressly admitted, Federal Defendants deny each and every allegation  
19 contained in paragraph 52 of the Amended Complaint.

20 53. Answering the allegation contained in the first sentence of paragraph 53 of the  
21 Amended Complaint, Federal Defendants admit the allegation to the extent it is consistent with  
22 87 Fed. Reg. 61660 (Oct. 12, 2022) and deny the allegation to the extent it is inconsistent with  
23 87 Fed. Reg. 61660 (Oct. 12, 2022). Answering the allegation contained in the second sentence of  
24 paragraph 53 of the Amended Complaint, Federal Defendants deny the allegation.

25 54. Federal Defendants deny each and every allegation contained in paragraph 54 and  
26 affirmatively allege that they have no legal obligation to "set prevailing rates each year" under  
27 applicable statutes or federal regulations.  
28

1           55.     Answering the allegations contained in paragraph 55 of the Amended Complaint,  
2 Federal Defendants admit that, pursuant to federal regulations, specifically, 20 C.F.R.  
3 § 655.120(c)(2), prevailing wage rates established by the Department for the H-2A program in  
4 Washington for the 2022 harvest season, based on results of the 2020 survey, expired as a matter of  
5 law. Except as expressly admitted, Federal Defendants deny each and every allegation contained in  
6 paragraph 55 of the Amended Complaint.

7           56.     Answering the allegation contained in the first sentence of paragraph 56 of the  
8 Amended Complaint, Federal Defendants admit that prior to the promulgation of 20 C.F.R.  
9 § 655.120(c)(2), prevailing wage rates established by the Department for the H-2A program did not  
10 expire automatically as a matter of law and would sometimes remain in effect until a new prevailing  
11 wage rate was established by the Department. Answering the allegation contained in the second  
12 sentence of paragraph 56 of the Amended Complaint, Federal Defendants admit the allegation to the  
13 extent it is consistent with “Handbook 385” and deny the allegation to the extent it is inconsistent  
14 with 87 Fed. Reg. 61660 (Oct. 12, 2022).

15           57.     Federal Defendants deny each and every allegation contained in paragraph 57 of the  
16 Amended Complaint.

17           58.     Federal Defendants admit the allegation contained in paragraph 58 of the Amended  
18 Complaint.

19           59.     Answering the allegations contained in paragraph 59 of the Amended Complaint,  
20 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
21 respond to the allegations contained in paragraph 59 of the Amended Complaint and, on that basis,  
22 deny the allegations contained in paragraph 59 of the Amended Complaint.

23           60.     Answering the allegations contained in paragraph 60 of the Amended Complaint,  
24 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
25 respond to the allegations contained in paragraph 60 of the Amended Complaint and, on that basis,  
26 deny the allegations contained in paragraph 60 of the Amended Complaint.

27           61.     Federal Defendants admit the allegation contained in paragraph 61 of the Amended  
28 Complaint.

62. Federal Defendants admit the allegation contained in paragraph 62 of the Amended Complaint as to a crop activity or agricultural activity or distinct work task.

63. Answering the allegations contained in paragraph 63 of the Amended Complaint, Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to respond to the allegations contained in paragraph 63 of the Amended Complaint and, on that basis, deny the allegations contained in paragraph 63 of the Amended Complaint.

64. Answering the allegation contained in paragraph 64 of the Amended Complaint, Federal Defendants admit the allegation to the extent it is consistent with 87 Fed. Reg. 61660 (Oct. 12, 2022) and deny the allegation to the extent it is inconsistent with 87 Fed. Reg. 61660 (Oct. 12, 2022).

65. Federal Defendants deny the allegation contained in paragraph 65 of the Amended Complaint.

66. Answering the allegations contained in paragraph 66 of the Amended Complaint, Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to respond to the allegations contained in paragraph 66 of the Amended Complaint and, on that basis, deny the allegations contained in paragraph 66 of the Amended Complaint.

67. Answering the allegations contained in paragraph 67 of the Amended Complaint, Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to respond to the allegations contained in paragraph 67 of the Amended Complaint and, on that basis, deny the allegations contained in paragraph 67 of the Amended Complaint.

68. Federal Defendants deny each and every allegation contained in paragraph 68 of the Amended Complaint.

69. Federal Defendants deny each and every allegation contained in paragraph 69 of the Amended Complaint.

70. Answering the allegation contained in paragraph 70 of the Amended Complaint, Federal Defendants admit the allegation to the extent it is consistent with 20 C.F.R. 655.120(c)(1)(v) and deny the allegation to the extent it is inconsistent with 20 C.F.R. 655.120(c)(1)(v).

1           71.     Answering the allegations contained in paragraph 71 of the Amended Complaint,  
2 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
3 respond to the allegations contained in paragraph 71 of the Amended Complaint and, on that basis,  
4 deny the allegations contained in paragraph 71 of the Amended Complaint.

5           72.     Answering the allegations contained in paragraph 72 of the Amended Complaint,  
6 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
7 respond to the allegations contained in paragraph 72 of the Amended Complaint and, on that basis,  
8 deny the allegations contained in paragraph 72 of the Amended Complaint.

9           73.     Answering the allegations contained in paragraph 73 of the Amended Complaint,  
10 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
11 respond to the allegations contained in paragraph 73 of the Amended Complaint and, on that basis,  
12 deny the allegations contained in paragraph 73 of the Amended Complaint.

13           74.     Federal Defendants deny each and every allegation contained in paragraph 74 of the  
14 Amended Complaint.

15           75.     Answering the allegation contained in paragraph 75 of the Amended Complaint,  
16 Federal Defendants admit the allegation to the extent it is consistent with 20 C.F.R.  
17 § 655.120(c)(1)(vii) and deny the allegation to the extent it is inconsistent with 20 C.F.R.  
18 § 655.120(c)(1)(vii).

19           76.     Answering the allegation contained in paragraph 76 of the Amended Complaint,  
20 Federal Defendants admit the allegation to the extent it is consistent with ESD's 2022 survey  
21 findings and deny the allegation to the extent it is inconsistent with ESD's 2022 survey findings.

22           77.     Answering the allegation contained in paragraph 77 of the Amended Complaint,  
23 Federal Defendants admit the allegation to the extent it is consistent with ESD's 2022 survey  
24 findings and deny the allegation to the extent it is inconsistent with ESD's 2022 survey findings.

25           78.     Answering the allegation contained in paragraph 78 of the Amended Complaint,  
26 Federal Defendants admit the allegation to the extent it is consistent with ESD's 2022 survey  
27 findings and deny the allegation to the extent it is inconsistent with ESD's 2022 survey findings.  
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1           79.     Answering the allegation contained in paragraph 79 of the Amended Complaint,  
2 Federal Defendants admit the allegation to the extent it is consistent with ESD's 2022 survey  
3 findings and deny the allegation to the extent it is inconsistent with ESD's 2022 survey findings.

4           80.     Answering the allegation contained in paragraph 80 of the Amended Complaint,  
5 Federal Defendants admit the allegation to the extent it is consistent with ESD's 2022 survey  
6 findings and deny the allegation to the extent it is inconsistent with ESD's 2022 survey findings.

7           81.     Answering the allegations contained in paragraph 81 of the Amended Complaint,  
8 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
9 respond to the allegations contained in paragraph 81 of the Amended Complaint and, on that basis,  
10 deny the allegations contained in paragraph 81 of the Amended Complaint.

11           82.     Answering the allegations contained in paragraph 82 of the Amended Complaint,  
12 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
13 respond to the allegations contained in paragraph 82 of the Amended Complaint and, on that basis,  
14 deny the allegations contained in paragraph 82 of the Amended Complaint.

15           83.     Answering the allegations contained in paragraph 83 of the Amended Complaint,  
16 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
17 respond to the allegations contained in paragraph 83 of the Amended Complaint and, on that basis,  
18 deny the allegations contained in paragraph 83 of the Amended Complaint.

19           84.     Federal Defendants deny each and every allegation contained in paragraph 84 of the  
20 Amended Complaint.

21           85.     Federal Defendants deny each and every allegation contained in paragraph 85 of the  
22 Amended Complaint.

23           86.     Federal Defendants deny each and every allegation contained in paragraph 86 of the  
24 Amended Complaint.

25           87.     Answering the allegation contained in paragraph 87 of the Amended Complaint,  
26 Federal Defendants admit the allegation to the extent it is consistent with federal regulations  
27 promulgated by Federal Defendants in 2022 establishing minimum standards for prevailing wage  
28 surveys conducted by SWAs for purposes of supporting Federal Defendants' role in establishing

1 prevailing wage rates for use in the H-2A program, and deny the allegation to the extent it is  
2 inconsistent with federal regulations promulgated by Federal Defendants in 2022 establishing  
3 minimum standards for prevailing wage surveys conducted by SWAs for purposes of supporting  
4 Federal Defendants' role in establishing prevailing wage rates for use in the H-2A program.

5 88. Federal Defendants deny each and every allegation contained in paragraph 88 of the  
6 Amended Complaint.

7 89. Answering the allegations contained in paragraph 89 of the Amended Complaint,  
8 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
9 respond to the allegations contained in paragraph 89 of the Amended Complaint and, on that basis,  
10 deny the allegations contained in paragraph 89 of the Amended Complaint.

11 90. Answering the allegations contained in paragraph 90 of the Amended Complaint,  
12 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
13 respond to the allegations contained in paragraph 90 of the Amended Complaint and, on that basis,  
14 deny the allegations contained in paragraph 90 of the Amended Complaint.

15 91. Federal Defendants admit that in 2022, the Adverse Effect Wage Rate (AEWR) was  
16 \$17.41. Except as expressly admitted, Federal Defendants deny each and every allegation contained  
17 in paragraph 91 of the Amended Complaint.

18 92. Answering the allegations contained in paragraph 92 of the Amended Complaint,  
19 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
20 respond to the allegations contained in paragraph 92 of the Amended Complaint and, on that basis,  
21 deny the allegations contained in paragraph 92 of the Amended Complaint.

22 93. Answering the allegations contained in paragraph 93 of the Amended Complaint,  
23 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
24 respond to the allegations contained in paragraph 93 of the Amended Complaint and, on that basis,  
25 deny the allegations contained in paragraph 93 of the Amended Complaint.

26 94. Answering the allegations contained in paragraph 94 of the Amended Complaint,  
27 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
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1 respond to the allegations contained in paragraph 94 of the Amended Complaint and, on that basis,  
2 deny the allegations contained in paragraph 94 of the Amended Complaint.

3 95. Answering the allegations contained in paragraph 95 of the Amended Complaint,  
4 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
5 respond to the allegations contained in paragraph 95 of the Amended Complaint and, on that basis,  
6 deny the allegations contained in paragraph 95 of the Amended Complaint.

7 96. Answering the allegations contained in paragraph 96 of the Amended Complaint,  
8 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
9 respond to the allegations contained in paragraph 96 of the Amended Complaint and, on that basis,  
10 deny the allegations contained in paragraph 96 of the Amended Complaint.

11 97. Answering the allegations contained in paragraph 97 of the Amended Complaint,  
12 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
13 respond to the allegations contained in paragraph 97 of the Amended Complaint and, on that basis,  
14 deny the allegations contained in paragraph 97 of the Amended Complaint.

15 98. Answering the allegation contained in paragraph 98 of the Amended Complaint,  
16 Federal Defendants admit the allegation to the extent it is consistent with ESD's 2022 survey  
17 findings and deny the allegation to the extent it is inconsistent with ESD's 2022 survey findings.

18 99. Federal Defendants deny each and every allegation contained in paragraph 99 of the  
19 Amended Complaint.

20 100. Answering the allegations contained in paragraph 100 of the Amended Complaint,  
21 Federal Defendants admit the allegations to the extent they are consistent with federal regulations  
22 promulgated by Federal Defendants in 2022 establishing minimum standards for prevailing wage  
23 surveys conducted by SWAs for purposes of supporting Federal Defendants' role in establishing  
24 prevailing wage rates for use in the H-2A program, and deny the allegations to the extent they are  
25 inconsistent with federal regulations promulgated by Federal Defendants in 2022 establishing  
26 minimum standards for prevailing wage surveys conducted by SWAs for purposes of supporting  
27 Federal Defendants' role in establishing prevailing wage rates for use in the H-2A program.  
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1           101. Answering the allegations contained in paragraph 101 of the Amended Complaint,  
2 Federal Defendants admit the allegations to the extent they are consistent with federal regulations  
3 promulgated by Federal Defendants in 2022 establishing minimum standards for prevailing wage  
4 surveys conducted by SWAs for purposes of supporting Federal Defendants' role in establishing  
5 prevailing wage rates for use in the H-2A program, and deny the allegations to the extent they are  
6 inconsistent with federal regulations promulgated by Federal Defendants in 2022 establishing  
7 minimum standards for prevailing wage surveys conducted by SWAs for purposes of supporting  
8 Federal Defendants' role in establishing prevailing wage rates for use in the H-2A program.

9           102. Answering the allegations contained in paragraph 102 of the Amended Complaint,  
10 Federal Defendants admit the allegations to the extent they are consistent with federal regulations  
11 promulgated by Federal Defendants in 2022 establishing minimum standards for prevailing wage  
12 surveys conducted by SWAs for purposes of supporting Federal Defendants' role in establishing  
13 prevailing wage rates for use in the H-2A program, and deny the allegations to the extent they are  
14 inconsistent with federal regulations promulgated by Federal Defendants in 2022 establishing  
15 minimum standards for prevailing wage surveys conducted by SWAs for purposes of supporting  
16 Federal Defendants' role in establishing prevailing wage rates for use in the H-2A program.

17           103. Answering the allegations contained in paragraph 103 of the Amended Complaint,  
18 paragraph 103 does not contain any allegation of fact but instead poses a hypothetical circumstance  
19 to which no response is required. To the extent a response is required, Federal Defendants deny  
20 each and every allegation contained in paragraph 103 of the Amended Complaint.

21           104. Answering the allegation contained in paragraph 104 of the Amended Complaint,  
22 Federal Defendants admit the allegation to the extent it is consistent with ESD's 2022 survey  
23 findings and deny the allegation to the extent it is inconsistent with ESD's 2022 survey findings

24           105. Answering the allegations contained in paragraph 105 of the Amended Complaint,  
25 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
26 respond to the allegations contained in paragraph 105 of the Amended Complaint with respect to the  
27 methodology used by ESD in its 2022 employer survey and, on that basis, deny the allegations  
28 contained in paragraph 105 of the Amended Complaint with respect to the methodology used by

1 ESD in its 2022 survey. Except as otherwise expressly admitted or denied, Federal Defendants deny  
2 each and every allegation contained in paragraph 105 of the Amended Complaint.

3 106. Federal Defendants deny the allegation contained in paragraph 106 of the Amended  
4 Complaint.

5 107. Answering the allegations contained in paragraph 107 of the Amended Complaint,  
6 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
7 respond to the allegations contained in paragraph 107 of the Amended Complaint and, on that basis,  
8 deny the allegations contained in paragraph 107 of the Amended Complaint.

9 108. Answering the allegations contained in paragraph 108 of the Amended Complaint,  
10 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
11 respond to the allegations contained in paragraph 108 of the Amended Complaint and, on that basis,  
12 deny the allegations contained in paragraph 108 of the Amended Complaint.

13 109. Answering the allegations contained in paragraph 109 of the Amended Complaint,  
14 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
15 respond to the allegations contained in paragraph 109 of the Amended Complaint and, on that basis,  
16 deny the allegations contained in paragraph 109 of the Amended Complaint.

17 110. Answering the allegations contained in paragraph 110 of the Amended Complaint,  
18 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
19 respond to the allegations contained in paragraph 110 of the Amended Complaint and, on that basis,  
20 deny the allegations contained in paragraph 110 of the Amended Complaint.

21 111. Answering the allegations contained in the first sentence of paragraph 111 of the  
22 Amended Complaint, Federal Defendants affirmatively allege that they lack sufficient information or  
23 belief necessary to respond to the allegations contained in the first sentence of paragraph 111 of the  
24 Amended Complaint and, on that basis, deny the allegations contained in the first sentence of  
25 paragraph 111 of the Amended Complaint. Answering the allegation contained in the second  
26 sentence of paragraph 111 of the Amended Complaint, Federal Defendant deny the allegation  
27 contained in the second sentence of paragraph 111 of the Amended Complaint.  
28

1 112. Federal Defendants deny each and every allegation contained in paragraph 112 of the  
2 Amended Complaint.

3 113. Federal Defendants deny each and every allegation contained in paragraph 113 of the  
4 Amended Complaint.

5 114. Answering the allegations contained in paragraph 114 of the Amended Complaint,  
6 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
7 respond to the allegations contained in paragraph 114 of the Amended Complaint with respect to the  
8 methodology used by ESD in its 2022 employer survey and, on that basis, deny the allegations  
9 contained in paragraph 114 of the Amended Complaint with respect to the methodology used by  
10 ESD in its 2022 survey. Except as otherwise expressly admitted or denied, Federal Defendants deny  
11 each and every allegation contained in paragraph 114 of the Amended Complaint.

12 115. Federal Defendants deny each and every allegation contained in paragraph 115 of the  
13 Amended Complaint.

14 116. Answering the allegations contained in paragraph 116 of the Amended Complaint,  
15 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
16 respond to the allegations contained in paragraph 116 of the Amended Complaint and, on that basis,  
17 deny the allegations contained in paragraph 116 of the Amended Complaint.

18 117. Federal Defendants deny each and every allegation contained in paragraph 117 of the  
19 Amended Complaint.

20 118. Federal Defendants deny each and every allegation contained in paragraph 118 of the  
21 Amended Complaint.

22 119. Answering the allegations contained in paragraph 119 of the Amended Complaint,  
23 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
24 respond to the allegations contained in paragraph 119 of the Amended Complaint and, on that basis,  
25 deny the allegations contained in paragraph 119 of the Amended Complaint.

26 120. Federal Defendants deny each and every allegation contained in paragraph 120 of the  
27 Amended Complaint.  
28

1           121. Federal Defendants deny each and every allegation contained in paragraph 121 of the  
2 Amended Complaint.

3           122. Answering the allegations contained in paragraph 122 of the Amended Complaint,  
4 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
5 respond to the allegations contained in paragraph 122 of the Amended Complaint and, on that basis,  
6 deny the allegations contained in paragraph 122 of the Amended Complaint.

7           123. Answering the allegations contained in paragraph 123 of the Amended Complaint,  
8 Federal Defendants admit that they do not prescribe the precise manner in which SWAs conduct  
9 their prevailing wage surveys to include any specific verification requirements. Federal Defendants  
10 affirmatively allege that SWAs are required to conduct their prevailing wage surveys in accordance  
11 with the minimum standards required by federal regulations in order to produce survey results that  
12 can be validated by the Department. As to the remaining allegations contained in paragraph 123 of  
13 the Amended Complaint, Federal Defendants affirmatively allege that they lack sufficient  
14 information or belief necessary to respond to the remaining allegations contained in paragraph 123  
15 of the Amended Complaint and, on that basis, deny the remaining allegations contained in  
16 paragraph 119 of the Amended Complaint.

17           124. Federal Defendants deny each and every allegation contained in paragraph 124 of the  
18 Amended Complaint.

19           125. Federal Defendants deny each and every allegation contained in paragraph 125 of the  
20 Amended Complaint.

21           126. Federal Defendants deny each and every allegation contained in paragraph 126 of the  
22 Amended Complaint.

23           127. Answering the allegations contained in paragraph 127 of the Amended Complaint,  
24 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
25 respond to the allegations contained in paragraph 127 of the Amended Complaint and, on that basis,  
26 deny the allegations contained in paragraph 127 of the Amended Complaint.

27           128. Answering the allegations contained in paragraph 128 of the Amended Complaint,  
28 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to

1 respond to the allegations contained in paragraph 128 of the Amended Complaint and, on that basis,  
2 deny the allegations contained in paragraph 128 of the Amended Complaint.

3 129. Answering the allegations contained in paragraph 129 of the Amended Complaint,  
4 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
5 respond to the allegations contained in paragraph 129 of the Amended Complaint and, on that basis,  
6 deny the allegations contained in paragraph 129 of the Amended Complaint.

7 130. Answering the allegations contained in paragraph 130 of the Amended Complaint,  
8 Federal Defendants admit that they do not prescribe the precise manner in which SWAs conduct  
9 their prevailing wage surveys. Federal Defendants affirmatively allege that SWAs are required to  
10 conduct their prevailing wage surveys in accordance with the minimum standards required by  
11 federal regulations in order to produce survey results that can be validated by the Department.

12 131. Answering the allegations contained in paragraph 131 of the Amended Complaint,  
13 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
14 respond to the allegations contained in paragraph 131 of the Amended Complaint and, on that basis,  
15 deny the allegations contained in paragraph 131 of the Amended Complaint.

16 132. Federal Defendants deny each and every allegation contained in paragraph 132 of the  
17 Amended Complaint.

18 133. Federal Defendants deny each and every allegation contained in paragraph 133 of the  
19 Amended Complaint.

20 134. Federal Defendants deny each and every allegation contained in paragraph 134 of the  
21 Amended Complaint.

22 135. Federal Defendants deny each and every allegation contained in paragraph 135 of the  
23 Amended Complaint.

24 136. Answering the allegations contained in paragraph 136 of the Amended Complaint,  
25 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
26 respond to the allegations contained in paragraph 136 of the Amended Complaint and, on that basis,  
27 deny the allegations contained in paragraph 136 of the Amended Complaint.  
28

1           137. Answering the allegations contained in paragraph 137 of the Amended Complaint,  
2 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
3 respond to the allegations contained in paragraph 137 of the Amended Complaint and, on that basis,  
4 deny the allegations contained in paragraph 137 of the Amended Complaint.

5           138. Answering the allegations contained in paragraph 138 of the Amended Complaint,  
6 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
7 respond to the allegations contained in paragraph 138 of the Amended Complaint and, on that basis,  
8 deny the allegations contained in paragraph 138 of the Amended Complaint.

9           139. Answering the allegations contained in paragraph 139 of the Amended Complaint,  
10 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
11 respond to the allegations contained in paragraph 139 of the Amended Complaint and, on that basis,  
12 deny the allegations contained in paragraph 139 of the Amended Complaint.

13           140. Federal Defendants deny each and every allegation contained in paragraph 140 of the  
14 Amended Complaint.

15           141. Federal Defendants admit the allegation contained in paragraph 141 of the Amended  
16 Complaint.

17           142. Federal Defendants deny the allegation contained in paragraph 142 of the Amended  
18 Complaint.

19           143. Answering the allegations contained in paragraph 143 of the Amended Complaint,  
20 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
21 respond to the allegations contained in paragraph 143 of the Amended Complaint and, on that basis,  
22 deny the allegations contained in paragraph 143 of the Amended Complaint.

23           144. Federal Defendants admit the allegation contained in paragraph 144 of the Amended  
24 Complaint.

25           145. Answering the allegations contained in paragraph 145 of the Amended Complaint,  
26 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
27 respond to the allegations contained in paragraph 145 of the Amended Complaint and, on that basis,  
28 deny the allegations contained in paragraph 145 of the Amended Complaint.

1           146. Answering the allegations contained in paragraph 146 of the Amended Complaint,  
2 Federal Defendants admit the allegation contained in paragraph 146 of the Amended Complaint as to  
3 Fiscal Year 2023 only. Except as expressly admitted, Federal Defendants deny each and every  
4 allegation contained in paragraph 146 of the Amended Complaint.

5           147. Answering the allegations contained in paragraph 147 of the Amended Complaint,  
6 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
7 respond to the allegations contained in paragraph 147 of the Amended Complaint and, on that basis,  
8 deny the allegations contained in paragraph 147 of the Amended Complaint.

9           148. Answering the allegations contained in paragraph 148 of the Amended Complaint,  
10 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
11 respond to the allegations contained in paragraph 148 of the Amended Complaint and, on that basis,  
12 deny the allegations contained in paragraph 148 of the Amended Complaint.

13           149. Answering the allegations contained in paragraph 149 of the Amended Complaint,  
14 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
15 respond to the allegations contained in paragraph 149 of the Amended Complaint and, on that basis,  
16 deny the allegations contained in paragraph 149 of the Amended Complaint.

17           150. Answering the allegations contained in paragraph 150 of the Amended Complaint,  
18 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
19 respond to the allegations contained in paragraph 150 of the Amended Complaint and, on that basis,  
20 deny the allegations contained in paragraph 150 of the Amended Complaint.

21           151. Answering the allegations contained in paragraph 151 of the Amended Complaint,  
22 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
23 respond to the allegations contained in paragraph 151 of the Amended Complaint and, on that basis,  
24 deny the allegations contained in paragraph 151 of the Amended Complaint.

25           152. Answering the allegations contained in paragraph 152 of the Amended Complaint,  
26 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
27 respond to the allegations contained in paragraph 152 of the Amended Complaint and, on that basis,  
28 deny the allegations contained in paragraph 152 of the Amended Complaint.



1           153. Answering the allegations contained in paragraph 153 of the Amended Complaint,  
2 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
3 respond to the allegations contained in paragraph 153 of the Amended Complaint and, on that basis,  
4 deny the allegations contained in paragraph 153 of the Amended Complaint.

5           154. Answering the allegations contained in paragraph 154 of the Amended Complaint,  
6 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
7 respond to the allegations contained in paragraph 154 of the Amended Complaint and, on that basis,  
8 deny the allegations contained in paragraph 154 of the Amended Complaint.

9           155. Federal Defendants admit the allegations to the extent that the chart is an accurate  
10 representation of the data it purports to depict and deny the allegations to the extent that the chart is  
11 an inaccurate representation of the data it purports to depict.

12           156. Federal Defendants admit the allegation contained in paragraph 156 of the Amended  
13 Complaint.

14           157. Answering the allegations contained in paragraph 157 of the Amended Complaint,  
15 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
16 respond to the allegations contained in paragraph 157 of the Amended Complaint and, on that basis,  
17 deny the allegations contained in paragraph 157 of the Amended Complaint.

18           158. Federal Defendants admit the allegation contained in paragraph 158 of the Amended  
19 Complaint.

20           159. Answering the allegations contained in paragraph 159 of the Amended Complaint,  
21 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
22 respond to the allegations contained in paragraph 159 of the Amended Complaint and, on that basis,  
23 deny the allegations contained in paragraph 159 of the Amended Complaint.

24           160. Answering the allegations contained in paragraph 160 of the Amended Complaint,  
25 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
26 respond to the allegations contained in paragraph 160 of the Amended Complaint and, on that basis,  
27 deny the allegations contained in paragraph 160 of the Amended Complaint.  
28

1           161. Answering the allegations contained in paragraph 161 of the Amended Complaint,  
2 Federal Defendants admit that the results of ESD's 2023 employer survey were not released at the  
3 time the original complaint in this action was filed. Except as expressly admitted, Federal  
4 Defendants deny the allegations contained in paragraph 161 of the Amended Complaint.

5           162. Answering the allegations contained in paragraph 162 of the Amended Complaint,  
6 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
7 respond to the allegations contained in paragraph 162 of the Amended Complaint and, on that basis,  
8 deny the allegations contained in paragraph 162 of the Amended Complaint.

9           163. Answering the allegations contained in paragraph 163 of the Amended Complaint,  
10 Federal Defendants admit that ESD submitted to DOL prevailing wage findings based on the 2022  
11 employer survey for four Washington fruit harvests. Federal Defendants affirmatively allege that  
12 ESD submitted a total of 35 ETA-232s, 9 with prevailing wage findings, and of those 9, four were  
13 for fruit harvesting activities.

14           164. Answering the allegations contained in paragraph 164 of the Amended Complaint,  
15 Federal Defendants affirmatively allege that of the 35 ETA-232s submitted by ESD based on its  
16 2022 survey, 18 were for fruit harvesting (four of which had prevailing wage findings, 14 of which  
17 had "no finding"); 15 were for fruit pruning; 2 were for fruit thinning. Except as affirmatively  
18 alleged, Federal Defendants deny each and every allegation contained in paragraph 164 of the  
19 Amended Complaint.

20           165. Answering the allegations contained in paragraph 165 of the Amended Complaint,  
21 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
22 respond to the allegations contained in paragraph 165 of the Amended Complaint and, on that basis,  
23 deny the allegations contained in paragraph 165 of the Amended Complaint.

24           166. Federal Defendants deny the allegation contained in paragraph 166 of the Amended  
25 Complaint.

26           167. Answering the allegations contained in paragraph 167 of the Amended Complaint,  
27 Federal Defendants admit that in its result for its 2022 agricultural employer survey, ESD did not  
28 find a prevailing wage for harvesting activities of any apple variety in Washington. Except as

1 expressly admitted, Federal Defendants deny each and every allegation contained in paragraph 167 of  
2 the Amended Complaint.

3 168. Answering the allegations contained in paragraph 168 of the Amended Complaint,  
4 Federal Defendants admit that in its result for its 2022 agricultural employer survey, ESD did not  
5 find a prevailing wage for harvesting activities of Red Delicious, Golden, Granny Smith, Gala, Fuji,  
6 Cripps Pink, Honeycrisp, Ambrosia, and Cosmic Crisp apple varieties. Except as expressly  
7 admitted, Federal Defendants deny each and every allegation contained in paragraph 168 of the  
8 Amended Complaint.

9 169. Answering the allegations contained in paragraph 169 of the Amended Complaint,  
10 Federal Defendants admit that in its result for its 2022 agricultural employer survey, ESD did not  
11 find a prevailing wage for harvesting activities for four of five varieties of cherries it surveyed, or for  
12 “general cherry” harvest. Except as expressly admitted, Federal Defendants deny each and every  
13 allegation contained in paragraph 169 of the Amended Complaint.

14 170. Federal Defendants admit the allegation contained in paragraph 170 of the Amended  
15 Complaint.

16 171. Answering the allegations contained in paragraph 171 of the Amended Complaint,  
17 Federal Defendants admit that where no prevailing wage is found for an activity, growers seeking to  
18 employ foreign agricultural workers pursuant to the H-2A program must pay their employees at least  
19 the highest of the Federal or State minimum wage, the wage rate established through collective  
20 bargaining or the Adverse Effect Wage Rate (AEWR) for that activity. Except as expressly  
21 admitted, Federal Defendants deny each and every allegation contained in paragraph 171 of the  
22 Amended Complaint.

23 172. Answering the allegations contained in paragraph 172 of the Amended Complaint,  
24 Federal Defendants admit the allegation contained in paragraph 172 of the Amended Complaint, and  
25 affirmatively allege that they are enjoined by the preliminary injunction issued in this action to  
26 reinstate wage rates effective for the 2022 harvest season for the duration of this lawsuit.

27 173. Federal Defendants deny the allegation contained in paragraph 173 of the Amended  
28 Complaint.

1           174. Federal Defendants admit that at the time Plaintiff filed its original complaint, Federal  
2 Defendants had not yet taken any final agency action on the basis of ESD's 2022 survey results.  
3 Except as expressly admitted, Federal Defendants deny each and every allegation contained in  
4 paragraph 174 of the Amended Complaint.

5           175. Federal Defendants deny the allegation contained in paragraph 175 of the Amended  
6 Complaint.

7           176. Federal Defendants deny the allegation contained in paragraph 176 of the Amended  
8 Complaint.

9           177. Federal Defendants deny the allegation contained in paragraph 177 of the Amended  
10 Complaint.

11           178. Answering the allegations contained in paragraph 178 of the Amended Complaint,  
12 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
13 respond to the allegations contained in paragraph 178 of the Amended Complaint and, on that basis,  
14 deny the allegations contained in paragraph 178 of the Amended Complaint.

15           179. Federal Defendants deny the allegation contained in paragraph 179 of the Amended  
16 Complaint.

17           180. Federal Defendants deny the allegation contained in paragraph 180 of the Amended  
18 Complaint.

19           181. Answering the allegations contained in paragraph 181 of the Amended Complaint,  
20 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
21 respond to the allegations contained in paragraph 181 of the Amended Complaint and, on that basis,  
22 deny the allegations contained in paragraph 181 of the Amended Complaint.

23           182. Answering the allegations contained in paragraph 182 of the Amended Complaint,  
24 Federal Defendants affirmatively allege that they lack sufficient information or belief necessary to  
25 respond to the allegations contained in paragraph 182 of the Amended Complaint and, on that basis,  
26 deny the allegations contained in paragraph 182 of the Amended Complaint.

27           183. Federal Defendants deny the allegation contained in paragraph 183 of the Amended  
28 Complaint.

1 184. Federal Defendants deny the allegation contained in paragraph 184 of the Amended  
2 Complaint.

3 185. Federal Defendants deny the allegation contained in paragraph 185 of the Amended  
4 Complaint.

5 186. Federal Defendants deny the allegation contained in paragraph 186 of the Amended  
6 Complaint.

7 187. Federal Defendants deny the allegation contained in paragraph 187 of the Amended  
8 Complaint.

9 **SECOND DEFENSE**

10 Plaintiff's claims are barred by the doctrine of claim preclusion.

11 **THIRD DEFENSE**

12 Plaintiff has forfeited their claims because of their failure to exhaust administrative remedies.

13 **FOURTH DEFENSE**

14 The Washington Employment Security Department and the Washington Commissioner of the  
15 Employment Security Department are necessary parties in whose absence this action cannot proceed  
16 in equity and good conscience.

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1 WHEREFORE defendants Julie Su, Acting Director, United States Department of Labor, and  
2 the United States Department of Labor, pray for judgment as follows:

- 3 1. For an order dismissing Plaintiff's complaint in its entirety with prejudice;
- 4 2. For an award of Federal Defendants' costs and disbursements incurred in this action;
- 5 3. For such other and further relief as the Court may deem just and proper.

6  
7 DATED this 1st day of November 2022.

8 Respectfully submitted,

9 TESSA M. GORMAN  
10 United States Attorney

11 /s/ Brian C. Kipnis  
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